



Subcommittee on Crime, Corrections, and Victims' Rights

STOPPING TERRORISM IN ITS TRACKS DEFENDING AMERICA'S RAILWAYS

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OCTOBER 2004**

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INTRODUCTION

As the ranking member and former Chairman of the Senate Foreign Relations Committee and as a former Chairman and current member of the Senate Judiciary Committee, I have spent my entire public life working to enhance our country's national security. For the foreseeable future, our national security will be directly tied to the manner in which we respond to the threat of terrorism at home and abroad. While supporting many of the goals of the Bush Administration, I have been an outspoken critic of the foreign policy and homeland security approach taken by President Bush. Indeed, I have argued that President Bush squandered a golden opportunity to rally the world to one common cause – the defeat of Islamic extremism and the terrorism that it produces. Rather than seize this historic opportunity, I believe that the President's actions have isolated us from our allies during a period when we can least afford to be isolated. Similarly, I believe that President Bush squandered the opportunity to prepare the American people for the sacrifices that would be necessary to protect the homeland. Instead of facing the hard-truths of what this effort would entail and

spreading the burden of the war on terrorism beyond our armed forces and their families, the President simply told the American people not to worry and to “go shopping” while giving the wealthiest 1% of us a significant tax cut. I believe that we are headed in the wrong directions, and I will continue to use my best efforts in the U.S. Senate to get our country back on the right track.

My criticisms of the President's approach pre-date 9/11, and they demonstrate a fundamental disagreement about our nation's priorities. In fact, on September 10, 2001, I gave a speech to the National Press Club entitled “U.S. Foreign Policy in the 21st Century: Defining Our Interests in a Changing World.” In this speech, I argued that the Administration's misguided pursuit of a national missile defense program wasted time and resources and failed to focus on the real threat that our nation faced. Specifically, I stated:

We'll have diverted all of that money to address the least likely threat, while the real threat comes to this country in the hold of a ship, the belly of a plane, or smuggled into a city in the middle of the night in a vial in a backpack. And I ask you, [if] you want to damage us, are you more likely to send a missile you're not sure you can reach us with a biological or chemical weapon . . . [o]r are you more likely to put somebody with a backpack crossing the border from Vancouver down to Seattle, or coming up the New York harbor with a rusty old ship with an atom bomb sitting in the hull? Which are you more likely to do? And what defense do we have against those other things?

The next day we tragically learned that we did not have adequate defenses for terrorist attacks, and thousands of Americans lost their lives. As the 9/11 Commission reported, our government lacked the imagination to foresee this type of attack, and, as a result, we did not take the necessary action that could have prevented it. Just as we failed to realize the threat we faced prior to 9/11, I believe that we have been focusing on the wrong homeland security vulnerabilities since that date.

The President has failed to sufficiently invest in many critical areas, including port security, chemical plants, nuclear facilities, and the subject of this report, rail security. I have been pushing for the Administration to take action for nearly three years. In fact, I attached a rail security amendment to the legislation forming the Transportation

Security Agency (TSA) in October 2001. At the behest of Senate colleagues, I withdrew my amendment to prevent any delays in the creation of the TSA, and I was assured that fellow lawmakers and the Administration would support strong measures and resources to enhance rail security in the near future. Nevertheless, there have been only minimal efforts to enhance rail security since that guarantee was made. Over the past three years, we have held Congressional hearings where experts have testified about the grave threat to our rails. In fact, one of the pre-eminent terrorism experts told Congress earlier this year that "trains and busses have become highly attractive target to terrorists, particularly terrorists bent upon high body counts. If we look at it from the terrorist perspective, for terrorist are determined to kill in quantity, willing to kill indiscriminately, trains, subways, buses are

ideal targets.” Moreover, we have received reports that al Qaeda operatives have directly plotted attacks – both conventional and chemical – against our rail systems. And, security experts have given us a list of best practices that could be deployed to significantly enhance security. Nevertheless, the Administration has taken only minimal steps that could enhance rail security, and, as pointed out by Stephen Flynn in his new book “America the Vulnerable,” these minimal steps are often presented as significant advancements, which promotes complacency in the U.S. Congress and within the American public.

To date, the Administration has failed to define the roles and responsibilities for federal, state, and local agencies involved in rail security, has failed to conduct a comprehensive vulnerability assessment, develop a security plan for rail systems, and has failed to request any direct funding from Congress to take the simple, effective steps that can ensure that the rails are substantially safer. For example, to this date the Bush Administration has spent over \$15 billion on aviation security since 9/11, and it has spent less than \$270 million on rail and transit security. Even after the tragic bombing in

Madrid, Spain, where nearly 200 people died, the Administration took only cosmetic steps to address security vulnerabilities and failed to acknowledge a need to request additional funding from Congress. Congress recognized this short-sightedness and allocated \$150 million for rail and transit security in the 2005 Department of Homeland Security (DHS) Appropriation Bill recently signed by the President. This bill included another \$5 billion for aviation security.

At long last, the Rail Security Act of 2004 passed the United States Senate on October 4, 2004. This bipartisan legislation was introduced by Senator John McCain, and it was supported by an unlikely coalition of Senators from different political backgrounds and philosophies. For example, the legislation was co-sponsored by Senator Peter Fitzgerald, Senator Lautenberg, Senator Susan Collins, Senator Clinton, Senator Schumer, Senator Olympia Snowe, Senator Kay Bailey Hutchinson, and many others. As a testament to this bill’s necessity and bi-partisan nature, it unanimously cleared the Commerce Committee, but Republican holds prevented it from being reported to the Senate floor

until the final days prior to the 2004 election recess. The legislation passed; however, because of the delay it is unlikely that the House of Representatives will have time to pass it during the November lame-duck session unless President Bush pushes for its passage. He has been absent during this debate for the past three years and it is doubtful that he will demonstrate the necessary leadership now. This legislation is critical because its passage would ensure that the Department of Homeland Security completes its leadership obligations by developing a plan to secure our rail systems,

and it would provide critical funding to cash-strapped rail owners and operators who don't have sufficient resources.

The measures that need to be taken are simple, proven actions, such as hiring more police, utilizing bomb sniffing dogs, upgrading tunnels, adding fencing around critical sites, and training personnel. It is time for Congress and President Bush to act. It's been almost three years since 9/11, and the American people deserve for us to take this threat seriously and to act appropriately.

EXECUTIVE SUMMARY

Rail systems in the United States are at significant risk of terrorist attack. Notwithstanding, the Congress and President Bush have been unable or unwilling to take the necessary steps to significantly enhance rail security. Around the world, attacks against rail systems have been increasing in frequency for the last 25 years, and Al Qaeda operatives have directly targeted U.S. rail systems on numerous occasions. Historical studies have shown that rail attacks are typically intended to cause mass casualties, and, as demonstrated by the recent attacks in Madrid, rail attacks are becoming more sophisticated and deadly. As a result, millions of Americans who utilize our rail systems are at risk and it seems that the threat is increasing. The Department of Homeland Security (DHS) has recently raised the terrorist threat level in certain cities, and officials at the Central Intelligence Agency (CIA) have indicated that the threat of terrorist attack is at its highest level since 9/11. The bottom line is that our rail systems are vulnerable, and the Bush Administration and Congress must act before it's too late.

Since 9/11, the Bush Administration has had a single minded focus on aviation security. And, in the opinion of many experts, they have neglected other critical areas such as port security, nuclear facilities, and rail transportation. This focus on aviation security has made other sectors more vulnerable by simply shifting the risk of attack. In order to be effective, security enhancements must provide a net benefit to overall security. A security effort that merely shifts the risk from one sector (aviation) to another sector (railroads) does not necessarily increase overall security. While prioritizing aviation security is understandable, the failure to significantly upgrade rail security has increased the risk to millions of rail users. In the common parlance of our post-9/11 world, our rail systems are "soft" targets. Officials have reported on-going conventional and chemical plots against U.S. rail systems, and the federal government has responded with threat advisories and security directives to rail owner/operators. However, President Bush has not prioritized the threat to rail systems and has failed to provide sufficient resources to help ensure that rail systems are as safe as possible.

During the last few years, many members of Congress on both sides of the aisle have done everything possible to highlight the inexcusable neglect of the Republican Congressional leadership and the Bush Administration. Members of the U.S. House of Representatives and Senate have held hearings, worked with experts to develop appropriate legislation, requested studies to determine appropriate levels of funding, and delivered many public statements about the urgent need to act. Despite bi-partisan support for enhanced rail security efforts, nothing has happened. The Republican leadership has held up critical legislation and approved only minimal funding to improve rail security. In addition, the Bush Administration continues to ignore the issue – taking only modest steps that are more suited for press releases and photo opportunities rather than real efforts to enhance security.

A quick look at the budget reveals the President's failure to prioritize rail security. Since September 11th, the Administration has spent nearly \$15 billion on air security and has allocated less than \$270 million for rail and transit security efforts. The President's 2005 budget requested no

additional funding for rail security and nearly \$5 billion more for aviation security. This disparity is inconceivable when you consider the widespread use of rail systems. For example, more individuals pass through Penn Station in New York each day than through Kennedy and La Guardia airports combined. Again, the intense focus on aviation security in the short-term is understandable, but it is particularly troubling that the recent bombings in Madrid, which killed nearly 200 people, did not spur Administration officials to advocate spending one additional dime for rail security. Fortunately, Congress appropriated \$150 million for rail and transit security for FY 2005; however this amount is still inadequate to meet the urgent need. In fact, \$1.1 billion dollars, the amount authorized by the Rail Security Act of 2004, is the best current assessment of what is required to meet the immediate threat. The legislation provides for a systematic risk assessment that may well uncover further steps that need to be taken.

Undoubtedly, securing our rail systems presents many challenges. These systems are open, easily accessible, and provide countless infrastructure targets. In addition,

there are many stakeholders, including the Federal government, state and local agencies, and private sector rail actors, that must work together. As a result, high-level planning, inter-agency cooperation, and seamless coordination must be a centerpiece of rail security efforts. The Department of Homeland Security (DHS) was specifically created to lead this type of coordinated effort. However, DHS has been unwilling or unable to embrace this leadership role. To date, the roles and responsibilities of each stakeholder have not been delineated, comprehensive threat assessments have not been completed, and security plans have not been enacted. In addition, DHS has yet to request specific funding from Congress to increase security of the rails. This is a failure in leadership of significant magnitude.

Although comprehensive planning is critical as we move forward, this report will highlight many simple, effective security measures that can be taken immediately. Security experts have studied rail attacks in other countries and have developed a list of best practices that can be used in the United States. Simple security upgrades, such as

increased patrols, bomb sniffing dogs, better lighting, and closed circuit television, have all been used to successfully enhance security. These are effective, quickly deployed solutions currently available to rail security authorities, and the federal government should do all that it can to assist them in making these security upgrades. Since 9/11, the Bush Administration has been focused on bureaucratic reshuffling that it believes has made America safer. While there has been a lot of activity, this report will demonstrate that President Bush has failed to place adequate priority on the threat to rail systems and that the threat may have simply shifted from one target to another. The Administration has invested billions of dollars for an aviation industry bail-out, and, most troubling, billions of dollars for a tax cut for the wealthiest Americans. Yet, it has been unable to find any significant funding for rail security within a yearly two trillion dollar budget request. It is the conclusion of this report that President Bush has been unwilling to exercise necessary leadership, and, as a result, the millions of Americans who travel on U.S. rail systems are at risk.

THE THREAT OF TERRORIST ATTACK TO RAIL TRANSPORTATION SYSTEMS

The threat of a terrorist attack against U.S. rail systems in the United States is real and growing.¹ The recent bombings of trains in Madrid and Moscow are painful reminders of a disturbing trend that has increased worldwide for the last twenty-five years.² Terrorist attacks on rail systems occur quite frequently throughout the world. In fact, 181 such attacks took place between 1998 and 2003.³ The majority of attacks took place in less developed countries like India

and Pakistan; however, industrialized nations have also been impacted. For example, the Irish Republican Army (IRA) has long targeted British rail systems and London subways. Algerian extremists set off bombs in Paris subways in 1995 and 1996. More recently, bombs have gone off (or been defused) on railways in India, Russia, France, Spain, the Philippines, the Czech Republic, South Africa, Israel, and Germany.⁴

U.S. Rail Systems Have Been Directly Targeted

U.S. rail systems have also been directly targeted. Nearly ten years ago, a New York subway attack was prevented when FBI agents conducted a pre-dawn raid of the Brooklyn apartment of Islamic extremists. After a shoot-out in which two suspects were injured, investigators found five bombs. During the subsequent interrogation, the suspects revealed that they intended to detonate the bombs at the Atlantic Avenue station in less than one day.⁵ One man, Abu Mezer, was convicted and sentenced to life in prison for plotting the attack that according to Assistant United

States Attorney Bernadette Miragliotta would have been devastating to New York subway users.⁶ In 2002, the FBI issued an advisory to state and local law enforcement warning of a plot to attack U.S. railroads.⁷ This warning, based upon information obtained during interrogations of al Qaeda detainees, suggested that they would attack bridges, key sections of track, and passenger trains. The threats were deemed particularly credible because investigators found photographs of railroad engines, rail cars, and crossings. Reports have also suggested that Al Qaeda has been pursuing chemical

attacks on U.S. subways,⁸ and the DHS recently issued threat advisories to state and

local officials after the Madrid rail attacks.⁹

Rail Systems are Inherently Vulnerable to Attack

Rail systems¹⁰ provide terrorists unlimited potential targets. They are open, easily accessible, and crowded. Millions of people use some form of rail transportation every day, and in many large cities the use of rail transportation is part of daily life. For example, 1,600 people hurry through New York's Penn Station every minute during rush hour.¹¹ Chicago's elevated tracks provide over 1.5 million trips for its citizens every day.¹² In addition, rail systems transport hazardous materials through highly populated areas on a daily basis. This presents opportunities for terrorists to carry

out dramatic attacks in which thousands could be killed, and many times there is little security around tracks and critical infrastructure, such as bridges and tunnels. This combination -- innocent civilians, ease of access, numerous infrastructure targets, hazardous materials, and minimal security -- creates a target that terrorists will attempt to exploit.



The Use of New Technologies Make the Threat More Dangerous

In recent years, terrorists have been utilizing technology and sophisticated planning to ensure that attacks are more dramatic and deadly. Unfortunately, this makes the threat infinitely greater than in

the past. In the mid 1990's, the world was horrified by a chemical attack in the Tokyo subway system. This attack killed 12 and wounded 5,000; however, experts indicate that it could have been

significantly worse if available technologies had been appropriately used. In the attack, carried out by a well-financed religious cult, a low-lethality batch of sarin was distributed through plastic bags. As a result, the poison did not spread rapidly, nor was it very potent. Purer sarin distributed in an aerosol form would have produced much more harmful results.¹³ On the other hand, the devastating result in Madrid was achieved through sophisticated

planning and the use of technology. This “conventional” attack was particularly deadly because the terrorists coordinated the simultaneous detonation of 10 bombs by using cellular telephones.¹⁴ The attack killed 190 and wounded over 1,800. Unfortunately, sophisticated, well-planned attacks are becoming a hallmark of the terrorist threat that we face today, and we must be prepared.

SPECIFIC THREATS TO RAIL SYSTEMS

On Thursday, April 1, 2004, the FBI and the DHS sent a bulletin to local law enforcement agencies saying terrorists might try to bomb buses and rail lines in major U.S. cities. The bulletin stated that terrorists could attempt to conceal explosives in luggage and carry-on bags, such as duffel bags and backpacks. It cites uncorroborated intelligence as indicating that such bombs could be made of ammonium nitrate fertilizer and diesel fuel, similar to what was used to blow up the Oklahoma City federal building in April 1995.



THE NEED TO SECURE RAIL TRANSPORTATION SYSTEMS

Increased security for U.S. rail systems is essential. The availability of safe reliable rail transportation is critical to the health of our nation's economy, and it significantly adds to the quality of life of millions of Americans. For example, rail systems allow individuals to travel to and from work, take long interstate trips, and it provides businesses with the ability to transport material goods

conveniently and efficiently. An attack on any component of the U.S. rail system could cause extensive damage in the form of civilian casualties and economic damage for businesses relying on timely shipments. In short, an attack on the nation's rail system could disrupt the fabric of many cities around the nation.

Millions of Passengers Use Rail Transportation Each Day

Each day, rail systems provide transportation for millions of Americans. People use subways as part of their daily commute to and from work. Passenger trains provide individuals and families the ability to conveniently and safely travel long distances between cities and across states. Passenger rail use is highest in cities along the Northeast corridor where it is a part of many people's daily lives. Passenger rail is also growing in other areas, such as Florida and California. In fact, thirty cities and twenty-two states have some

combination of rail transit in the form of subways, light rail, and/or commuter rail systems. These systems provide 11.3 million passenger trips every single day. Amtrak, alone, provides over 64,000 passenger trips per day for a total of 23.4 million per year.¹⁵ In fact, many rail systems provide exponentially more passenger trips than the cities' corresponding airport system. For example, Metrorail in Washington, DC provides 181 million trips per year which is 25 times more than Washington Reagan National Airport.¹⁶

Freight Rail Systems Present Different Threats, Including Hazardous Materials

Although the threat differs, securing freight rail systems is essential as well. In addition to potentially causing the death of innocent civilians, an attack on freight rail systems could also do significant damage to the U.S. economy. For example, freight rail systems carry 15 billion tons (310 pounds for each U.S. citizen) of goods each day. This sum represents 42% of all intercity freight, and it is worth more than \$9 trillion per year.¹⁷ Shutting down any component of this system would be very costly for U.S. businesses. Indeed, a recent study estimated that a terrorist attack that shuts down the Alameda Corridor East rail system would cost \$414 million per day.¹⁸ Moreover, passenger rail companies and freight rail companies often share assets, and a security lapse in one could compromise the entire system.

Hazardous materials present a particularly troubling concern that requires immediate attention. There are approximately 268,000 tank cars in the United States, and one-half of these cars carry hazardous materials over U.S. rails. Over 83 million tons of hazardous

materials are carried through urban and rural areas every year.¹⁹ These materials include hydrochloric acid, chlorine, ammonia, and others, and they are routinely parked for extended periods near residential areas and shipped through urban areas. While the safety record for transporting these chemicals is impeccable, a terrorist could successfully target these to achieve devastating results. For example, a Naval Research Laboratory study recently found that a terrorist attack on a single chlorine car of the sort that routinely travels through the Washington, D.C. metro area could kill over 100,000 residents within half an hour as the toxic cloud spread over a 14 miles radius.²⁰

A recent train derailment near Minot, North Dakota demonstrates the danger. The accident caused a rupture of five tank cars that released 146,700 gallons of anhydrous ammonia into the air. Upon release, the liquefied, compressed gas formed a vapor plume that immediately rose over 300 feet covering the derailment site and surrounding area. Over the next several days, the plume

expanded downwind for five miles, eventually covering a population of 11,600 people.²¹ Fortunately, the derailment took place in a sparsely populated area, which allowed emergency services personnel to avert disaster by taking appropriate measures. The only casualty resulted from a car wreck of a man frantically fleeing the scene. This type of panic demonstrates the type of chaos that could ensue if an

attack rapidly spread hazardous chemicals in a populated area. Moreover, a dramatic, chemical attack would spread fear and panic throughout the nation – particularly the reason terrorists would attempt such an attack.



THE CHALLENGE OF SECURING RAIL TRANSPORTATION SYSTEMS

All rail systems have unique features that make them inherently vulnerable to terrorist attack.²² By design, rail transit systems are based on an open architecture. They have multiple access points with very few, if any, barriers to entry. Rail systems allow easy access for passengers, provide convenient station locations for patrons often in urban areas, and provide intermodal connections throughout the nation. This architecture allows passengers to move quickly and efficiently to and from the trains, and it provides the ability to

transfer large amounts of material goods conveniently and efficiently. In addition, rail systems have many critical infrastructure assets, such as tracks, transfer stations, passenger depots, tunnels, and bridges in urban and rural areas. As a result of these inherent features, the security framework must be different than that deployed in commercial aviation– a closed architecture. Strict access control and passenger screening is not feasible in the rail security paradigm, and it makes the goal of rail security more challenging.

Countless Infrastructure Targets are Available

Rail systems offer literally thousands of infrastructure targets. These targets are vast and wide-ranging. A recent industry survey identified over 1,300 critical assets,²³ but there are many more that are potential targets. For example, there are over 140,000 miles of track traversing through tunnels and over bridges across the country. Amtrak has over 500 stations, and in New York City alone, there are 277 underground stations, 153 elevated stations, 68 bridges, 445 underground route miles, and 14 underwater tunnels.²⁴ The rail infrastructure is so large that most security experts acknowledge that it would be impossible to protect each component at a reasonable cost.²⁵ As a result, security measures should be focused towards areas where an attack could claim thousands of lives or an attack could cause a systemic breakdown in the system.

Large train stations are the highest priority for most security officials.²⁶

These stations, particularly those in metropolitan areas, serve thousands of people daily. For example, 500 to 600 thousand²⁷ people pass through Penn Station every day. Similarly, thousands of civilians pass through stations in Washington, DC, Boston, Philadelphia, and Chicago each day. As a result, these stations provide ideal targets because they offer the potential to do severe damage with a simple attack. In addition, the stations are crowded, people are in a hurry, and there are many points of entry and exit. These features may allow terrorists to remain undetected to conduct surveillance, carry out the attack, and escape when the deed is complete. And, as stated, it is difficult to keep terrorists and dangerous materials out of these stations because strict access control and passenger screening are not acceptable as they would grind the system to a halt.

UNION STATION, WASHINGTON, DC

Union Station, a Washington, DC landmark, provides a prime example of the challenges involved in securing rail systems. Located only a few blocks from the United States Capital, Union Station is a vast facility that combines passenger rail systems, freight rail systems, and so-called heavy rail or subway systems. There are tunnels, platforms, tank cars carrying hazardous materials, and many other infrastructure targets. In fact, one of the tunnels coming from Union Station passes directly under the U.S. Supreme Court.

Thousands of individuals pass through numerous entry/exit points at Union Station every day. The trains and passengers have different destinations and a strict schedule to keep. Accordingly, the trains must maintain precise arrival and departure times. In addition, the station also has a shopping mall, restaurants, and a movie theater. This brings thousands of non-travel patrons to the station. Any security delay – e.g., x-ray machines or bag searches – will cause the system to break down. This, together with the high volume of individuals in the facility at any given time, demonstrates the problem.



Tunnels and bridges are also high priorities. A conventional or, even worse, a chemical attack in a tunnel could kill thousands. For example, one Amtrak fleet has more passengers than several 747s and a sophisticated terrorist

attack while a train is on a bridge or under a tunnel could put all of these lives at risk. Many tunnels have significant structural concerns, such as poor ventilation, lighting, and insufficient evacuation routes. In the event of an

attack, these deficiencies could prove to be catastrophic – a literal deathtrap. In addition, these structures serve as chokepoints for rail transportation, and if rendered inoperable by a terrorist attack, the nation's economy could be substantially impacted.

A recent accident in a Baltimore tunnel demonstrates both potential dangers. In the summer of 2001, a train derailed in the Howard Street tunnel. The derailment caused a fire²⁸ that quickly reached 1,500 degrees. Black smoke poured from both ends of the tunnel and manhole covers around the city for several days. In fact, the fire was so intense that the emergency responders, equipped with compressed air and gas masks, had to turn back on their first attempt to reach the source. Fortunately, at the time of the accident the conductors were able to detach the lead locomotive and drive to safety; however, it is

doubtful that passengers on the same train would have been able to escape the poorly ventilated, inadequately lit tunnel.

The fire also caused significant economic problems around the country and the world. Fiber optic cables in the tunnel connected a major line between New York and Miami. These lines were destroyed, causing headaches for several major telecommunications carriers.²⁹ In addition, as a major thoroughfare for goods-in-transit on the east coast, the tunnel's closure required scores of shipments to be re-routed. Fortunately, rail cars were successfully diverted and most customers received timely delivery. However, one expert indicated that businesses were extremely lucky in that the accident occurred during a low volume period. If it had occurred later in the year much more financial damage would have occurred.³⁰



Funding Security Upgrades is the Most Pressing Challenge

Funding is a critical problem facing the rail sector. According to security experts, government officials, and industry executives, funding is the most pressing challenge to securing the nation's rail systems.³¹ Most security upgrades require funding, and rail companies simply don't have resources available to fund the necessary upgrades. Just as the airline industry, rail companies typically operate with thin profit margins. This makes it difficult for them to allocate additional resources for security.

Realizing the urgent need, however, most companies have taken steps to enhance security. For example, many companies have conducted vulnerability studies, updated emergency response plans, and taken steps aimed at prevention. These activities require additional resources. In addition, many companies are undertaking day-to-day activities, such as increased patrols and canine units that increase costs significantly. In fact, Amtrak estimates that it costs an additional \$11,000 in manpower costs each day that the nation is on elevated (orange) alert status.³²

Moreover, enhanced security efforts can pull workers from other necessary jobs. This impacts productivity, further damaging the company's bottom line. In addition, the anemic economy has left state and local governments in poor financial position, which hinders (or eliminates) the ability to provide funding. Indeed, the National Governor's Association and the U.S. Conference of Mayors have reported that most states and cities are facing budget shortfalls, requiring tough trade-offs between other essential services and rail security.

Members of Congress calling for security upgrades understand that resources are limited. The security needs are simply too great to fund every security need, and the private sector bears the responsibility of ensuring the safety of its particular industry. However, as President Bush has stated on many occasions, it is his solemn responsibility to protect the American people. Given the importance of our rail systems, the continued terrorist threat to these systems, and the potential for mass casualties, it seems that a substantial

level of funding for rail security is appropriate and required. On this point, President Bush has disagreed, and he has basically ignored rail security. Over the last three years, nearly \$15 billion has been provided for aviation security, and another \$5 billion has been provided for FY '05. Conversely, the President has

not specifically requested one dime to help meet the threat to U.S. rails.³³ Fortunately, Congress provided an additional \$150 million dollars for FY 2005. Unless the President gets serious about rail security and places proper emphasis on this threat, Americans will remain at risk.

RAIL SECURITY EFFORTS: A RECORD OF MODEST EFFORTS, IGNORED WARNINGS, AND FAILED LEADERSHIP

Since 9/11 the efforts of the federal government to enhance rail security have been “modest” and “fragmented.”³⁴ Industry has taken some important steps; however, many experts feel that any overall gains achieved have been negligible. Indeed, according to many experts the overall state of security remains at pre 9/11 levels.³⁵ Despite reports from security experts that our rails are vulnerable, warnings from al Qaeda operatives that they are being

targeted, and pleas for action by many members of the private sector and Congress, President Bush has failed to take any significant steps to enhance rail security. The President has failed to provide the organizational framework and has failed to allocate significant resources for this effort. The bottom line is that on an issue of grave importance to millions of Americans there has been very little leadership from President Bush and his Administration.

The Department of Homeland Security has failed to Lead

While rail security is a shared responsibility involving the federal government, state and local agencies, and the private sector, the primary

responsibility for providing leadership and to coordinate efforts has been statutorily assigned to the DHS. Prior to September 11, 2001, the Department of

Transportation (DOT) was the primary federal entity involved in passenger and freight rail security matters. However, this changed when Congress passed the Aviation and Transportation Security Act which created and transferred this authority to the Transportation Security Agency (TSA).³⁶ This agency was given responsibility “for security in all modes of transportation.”³⁷ It was subsequently subsumed by the DHS when it was created.³⁸

As TSA worked to establish itself and comply with Congressional deadlines in the aviation sector, the DOT’s modal administrations continued to take the lead with respect to rail security. For example, the Federal Transit Administration (FTA) provided grants for emergency drills and conducted security assessments of the largest transportation agencies. The Federal Highway Administration (FHWA) coordinated workshops on emergency response and preparedness for state departments of transportation. Because safety and security concerns often overlap and because of DOT’s longstanding experience with respect to rail safety, Congress wanted to ensure

that these agencies continue to play an important role, however the lead responsibility was mandated to DHS. Indeed, Congress specifically stated that DHS’s duties “includ[e] ... security responsibilities over the other modes of transportation that are exercised by the Department of Transportation.”

It has been nearly three years since 9/11 and two years since the creation of DHS. Yet, officials at DHS have not completed the essential task of assigning the roles and responsibilities of each federal agency. This is critically important given DOT’s continued role in rail security, and the failure to complete this essential task could create confusion, duplication of efforts, and could ultimately “hamper the transportation sector’s ability to prepare for and respond to attacks.”³⁹ As such, DOT and DHS must determine each agencies roles and responsibilities immediately. In addition, this failure could hamper long-term efforts because the nature of the relationship between DHS and DOT is critical in determining funding priorities moving forward and interfacing with the transportation sector stakeholders. To solve this problem,

GAO has recommended on several occasions that DHS and DOT enter into a Memorandum of Understanding (MOU) to spell out each agency's roles. DHS officials have dismissed this need and have insisted that each agency is working together properly. Moreover, DHS officials have argued that Presidential Decision Directive (PDD) 7 related to critical infrastructure obviates the need for an MOU.⁴⁰

Notwithstanding these pronouncements, problems still exist in its coordination efforts. For example, GAO reported that during the last code orange alert DOT and DHS both provided information to industry representatives. However, the information given by each agency was inconsistent, and, more troubling, the security requests made by DHS and DOT conflicted “—that is, they were asking for different security measures.”

⁴¹ In addition, industry representatives reported that dealing with multiple agencies on the same set of issues is frustrating and time consuming.

Another significant problem in securing the U.S. rail system is the administration's failure to provide a

comprehensive threat assessment or security plan for rail security.⁴² A vulnerabilities study and security plan is essential, and it has been called for on numerous occasions. Security experts have pointed out that the rail infrastructure is simply too large to completely protect, and efforts must be directed to the most vulnerable points. Similarly, GAO has forcefully argued that risk-management principals be utilized in determining rail security priorities. For example, it is clear that critical infrastructure targets such as large stations, tunnels, hazardous materials, and many of the best-practices identified by security experts should be given high priority; however, less obvious areas of focus should be determined and prioritized through a detailed threat analysis and security plan. Indeed, according to Administration officials it would be “inappropriate to begin throwing money at a problem that hasn't been defined in any particular way.”⁴³ Unbelievably, nearly three years after 9/11, this plan is still not complete. Administration officials have reported that this plan would be done before the first of the year.⁴⁴ While this plan is critical, we know that there are

simple, effective measures detailed by security experts and highlighted in this report that should be deployed today. Let's hope that we are not too late.

An example of the lack of guidance given by the federal government and the failure to provide a comprehensive security plan is evident in a new proposal by New York City Transit officials. Several months ago, NYC transit officials announced a decision to ban photography of the subway and bus system in New York. The ban is intended to deter terrorists from conducting surveillance of the transit

system for future attacks. This will, according to local officials, enhance passenger and employee safety, and the transit authority has provided a waiver process for journalists and other approved individuals. Even with this waiver process, many advocacy groups have argued that the ban violates the First Amendment. Mayor Bloomberg has blasted the proposal as unhelpful and "overzealous."⁴⁵ Without strong federal guidance and a detailed security plan detailing prudent security measures, we can expect many ad hoc, sometimes ill-advised security proposals to continue.

The Bombings in Madrid, Spain: A Call to Action?



Many felt the March 2004 bombings in Madrid, would serve as a wake-up call that the Administration needed to take the threat to domestic rail systems seriously. Shortly after the attack, Secretary Ridge held a press conference

on rail security with many of the nation's rail and transit leaders. Secretary Ridge stated that "the bombings in Madrid are a solemn reminder that terrorists continue to expose and exploit our vulnerabilities" and requested that the transportation sector be on heightened alert. He also announced that the DHS would be "adding several new layers of security to ... help reduce vulnerabilities in our system and make commuters and transit

riders more secure aboard our nation's trains and subways." This tragedy occurring to a traditional ally starkly reminded Americans the threat we face at home. President Bush could have used this moment to announce sweeping new proposals and to focus law-makers and the public on the challenges to be addressed. The American people would have overwhelmingly supported new security efforts, and leaders in Congress would have immediately approved significant funding requests. Unfortunately, the President failed to seize the moment, and he sent Secretary Ridge out to announce a series of modest proposals. Secretary Ridge foreshadowed the insignificant half-measures that would be forthcoming when he stated that the initiatives would be funded with existing resources. Because the Administration had failed to request specific funding for rail security in any of its last three budget requests, it was clear to those who had studied the issue that a well-worded press release would be the most substantial result of the announcement.

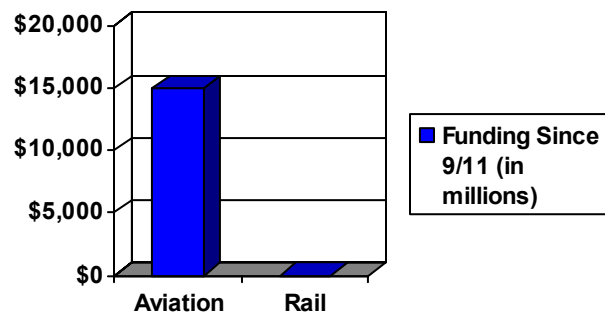
On May 20, 2004, nearly two months after Secretary Ridge's press conference, the DHS announced new security directives for rail owners and operators. According to DHS, these regulations were developed in consultation with industry experts to require rail operators to take minimal steps to enhance security. They included the designation of security coordinators by rail operators, the submission of security assessments to DHS, removal of certain trash receptacles, and requiring employees to report suspicious packages.⁴⁶ Although DHS characterized the directives as "a significant step forward," the impact on the existing state of security has been considered negligible. No new funding was allocated to assist rail companies with compliance, and, in fact, most rail owners had begun implementing these prudent security practices immediately after 9/11. When asked about the impact of the new regulations, one transportation executive stated that "since September 11, 2001, the industry has spent \$1.7 billion of its own resources to fund security initiatives, many of which are included in these directives."⁴⁷ In effect, the

Administration announced security measures that the rail industry had measures already implemented by most

rail owners as a significant security advancement.

President Bush's Budget Requests Demonstrate Misplaced Priorities

The final and most telling example of President Bush's failure to prioritize rail security efforts is his yearly budget request. In each budget since September 11, 2001, the Administration has requested and Congress has provided approximately \$5 billion for aviation security. During the same time frame, President Bush has not requested a single dollar specifically for rail security. Accordingly, over this time period almost \$15 billion has been spent on aviation security, whereas, less than \$270 million has been spent on rail security. Unfortunately, this trend is continuing. The President's 2005 budget request did not allocate any resources for rail security, and as discussed in the previous section, the tragic bombings in Madrid did not spur the Administration to advocate requesting one additional dime for rail security.



The Administration argues that rail security funding is being provided under the Urban Area Security Initiative (UASI). The UASI is a grant program that specifically allocates funds for large, high risk metropolitan areas. The program allows the Secretary of Homeland Security to designate funding for specific purposes depending on threat assessments and other intelligence information, and DHS officials have stated that a certain portion of this money in fiscal year 2005 will be specifically designated for rail security.⁴⁸ If fully funded by Congress, the UASI will have only \$1.4 billion dollars to allocate amongst every metropolitan area in the nation. This amount simply isn't

enough to meet the needs of all major cities across the nation, and if history is any guide, rail security will not receive enough funding to make a significant impact. For example, transit systems were given only \$50 million under UASI

in 2004.⁴⁹ Despite the Administration's arguments, Congress provided another \$150 million for rail and transit security for FY 2005. Nevertheless, there is little doubt that the sums made available will be woefully inadequate.

Rail Industry Efforts: A Good Start but Federal Assistance Needed

The private sector has been actively taking steps to enhance rail security.⁵⁰ Many rail stakeholders including the Association of American Railroads, Amtrak, and others have undertaken many new security measures and increased frequency of existing security activity.⁵¹ Passenger and freight rail providers have conducted vulnerability assessments of their systems to identify potential vulnerabilities, critical infrastructure, and other assets. These assessments formed the basis of a security plan based upon best practices from the national intelligence community.⁵² In developing this plan, the industry worked with chemical industry experts, security consultants, and intelligence experts. The plan sets forth an alert system and specific activities to prevent and respond to terrorist activities. Passenger rail

companies have also taken steps by increasing the frequency of emergency drills.⁵³ Finally, many transit agencies have participated in or conducted additional training on security and anti-terrorism.⁵⁴

The National Railroad Passenger Corporation, commonly known as Amtrak, provides an excellent example of the uphill battle that many rail operators face in making necessary security upgrades. Amtrak provides service for nearly 24 million passengers a year over a track network of 22,000 route miles. In addition, Amtrak serves more than 500 stations -- many providing over 1 million boardings per year. To patrol this vast network, Amtrak has a police force of only 342 sworn officers. These officers are specially trained security officer and provide excellent service for Amtrak's

patrons. However, they are simply stretched too thin to be secure all of Amtrak's network, and despite Amtrak's best efforts, they have simply been unable to provide the necessary bodies, equipment, and training.⁵⁵ For example, Amtrak has begun conducting canine patrols in stations, luggage rooms, and trains; however, they have only been able to fund seventeen dogs for its entire network.

Amtrak officials would like to do more, but they are prevented by financial difficulties. Indeed, Chief Frazier of the Amtrak Police reminded Senators of the financial hurdles facing Amtrak at a recent hearing before the U.S. Senate Judiciary Committee. When asked what steps would be taken if federal funds were available, Chief Frazier presented a comprehensive list of straight forward actions that could be taken. Specifically, Chief Frazier stated that

we want to add police to [the] stations. We want to add explosives detection capability. We want to put more dogs into those stations. We want to increase the number of radiological pagers we have that are available to us. ... Our next area is to improve the security of tunnels through surveillance equipment, through the deployment of additional fence. ... We want to understand the blast vulnerability of our stations and what we can do to improve their physical ability to withstand a problem and to protect the passengers that use them."⁵⁶

It is important to note that his request was not for pie-in-the sky, unattainable technology; rather he requested simple, straight forward security upgrades. Other members of the expert panel

concurred with Chief Fraizer's assessment, stating that it was a "pragmatic, sensible list" and urged that action should be taken because we know what can be done to enhance security.⁵⁷

Congressional Actions: Bipartisan Support for Action Derailed.

Many members of Congress on both sides of the aisle have been pressing the Administration to act on rail security

since 9/11. For three consecutive years, these pleas have fallen on deaf ears at the White House and within the

Republican Congressional leadership. Finally, on October 4, 2004 the U.S. Senate passed the Rail Security Act of 2004. Although this represents some progress, it is unlikely that this bill will become law anytime soon. Unless the President demonstrates real leadership and urges this bill's passage in the House of Representatives during the coming lame-duck legislative session, this legislation, like so many other attempts to enhance rail security will die. Since 9/11 there have been repeated attempts⁵⁸ to push rail security legislation through Congress. For example, Senator Hollings, Senator McCain, myself, and others introduced "Railroad Advancement and Infrastructure Law for the 21st Century" was introduced before the Commerce, Science, and Transportation Committee in October 2001.⁵⁹ This legislation set forth many of the basic provisions that have formed the backbone of most subsequent bills. The primary goal of the legislation was to help rail operators complete the security upgrades that experts indicated were critical. The bill included \$1.3 billion in funding assistance to hire police, provide security fencing, enhance lighting, and to provide

upgrades to tunnels and other critical infrastructure assets. The bill provided the basics, it was inexpensive, and its passage would have helped to dramatically increase homeland security.

In conjunction with the introduction of this bill, I chaired a closed hearing before the Judiciary Crime Subcommittee entitled "Defending America's Transportation Infrastructure." The purpose of the hearing was to ensure that the government adopted a forward looking plan rather than simply responding to the last attack. At the time, the Administration was understandably focused on fixing problems with the airline industry, and this hearing was intended to emphasize the risks to non-aviation transportation systems and the need for federal leadership and investment in these critical areas.

At the time of the hearing, the nation was still reeling from the shock of the 9/11 attacks, and Congress had just received chilling testimony regarding the risk of terrorist attacks to rail systems. Inexplicably, the Congress failed to act. President Bush did not use his influence

to support the bill, and the legislation was held up by technical procedures by Senate Republican leaders. In fact, the bill was never allowed to go to the floor for a vote. It was hot-lined⁶⁰ on the Democratic side; however, it faced a number of holds on the Republican side. To protest the actions of the Republican leaders, many DOT nominees were help up, but the Republican holds continued. In typical fashion, there was no argument made that the legislation was misguided or unnecessary, rather the Republican leadership and the Bush Administration just sat on it and did nothing to enact the legislation.

Over the next two years, officials received numerous intelligence warnings of terrorist plans to conduct conventional and chemical attacks against rail systems. Many of these warning came from the direct interrogation of al Qaeda operatives at Guantanamo Bay.⁶¹ These threats were deemed credible enough to send advisories to state and local law enforcement requesting them to be on high alert. There were press accounts detailing conventional and chemical plots against rail systems. Still, the

Administration did next to nothing to enhance rail security.

On March 23, 2004, the Senate Committee on Commerce, Science, and Transportation held another hearing on rail security. At that hearing, lawmakers, security experts, and industry executives, once again, discussed the threat to rail security and the security upgrades that were critically needed. Representatives from the United States General Accounting Office (GAO) discussed the need for federal assistance in enhancing security. In studying the issue for the last several years, GAO indicated that funding is a key challenge faced by all rail systems because most transit agencies are simply unable to absorb the additional security costs. In response to questioning about the Administration's funding priorities, Under Secretary for Border and Transportation Security Asa Hutchinson indicated that any funding would come from the Urban Area Security Initiative and that the Administration had reached the appropriate balance regarding funding for rail security.⁶²

On April 1, 2004, Senator McCain, Senator Hollings, myself, and others introduced the “Rail Security Act of 2004.”⁶³ This legislation built upon the 2001 legislation to provide necessary legal changes, specific directives to the Administration, and, most importantly, authorized funding for increased security measures. This bill was quickly reported out of the Senate Commerce Committee; however, the Republican leadership held up the legislation. After months of delay, the legislation finally passed the U.S. Senate; however, the stalling tactics worked, and due to the late date of its passage, this legislation will not, absent strong leadership from President Bush, become law in this Congress. To demonstrate the Administrations’ lax approach to rail security, the DHS never commented on the bill; it never recommended changes that would make the bill better; and to this date, it has yet to take any appreciable steps to enhance rail security that would obviate the need for the legislation. As it has on so many occasions in the past with respect to rail security, the Administration has failed to lead.

On April 8, 2004, yet another hearing was held to discuss rail security issues in the United States Senate.⁶⁴ The Senate Judiciary Committee held a hearing to discuss whether current law provided prosecutors the necessary legal tools to safeguard our rail systems. Many of the laws applicable to non-aviation transportation were drafted back in 1940, and over time many deficiencies and disparities have developed that should be resolved. For example, current laws prevent carrying a weapon, firearm, explosive, or incendiary device aboard and aircraft;⁶⁵ however, it is unclear whether the same prohibitions apply to dangerous materials carried on a train.⁶⁶ In addition, 18 U.S.C. 1993 prohibits the use of a biological agent to cause harm on a mass transportation vehicle; however, the law does not place the same restriction if the vehicle in question is a freight train. Fortunately, the USA Patriot Act did provide some new tools for prosecutors. For example, section 801 of the bill created a new federal statute that criminalizes terrorist attacks or other acts of violence against mass transportation system.⁶⁷ This statute was utilized by the U.S. Attorney in Tennessee to prosecute an individual

who attacked a bus driver with a knife. While America's capable prosecutors will, in all likelihood, be able to prosecute and convict any individual that conducts a terrorist attack, there are many disparities that should be addressed by Congress to ensure that no would-be terrorist escapes justice.

A second panel of witnesses included industry and security experts who

provided general testimony regarding the threat of attack and the necessary response. Once again, experts pointed out the threat to rail systems, and the need to increase security efforts. For example, Brian Michael Jenkins, one of the preeminent experts on rail security in the nation put it succinctly when he told the Committee that

there is no question that the threat is real. Trains and buses have become highly attractive targets to terrorists, ***particularly terrorists bent upon high body counts. If we look at it from the terrorist perspective, for terrorists are determined to kill in quantity, willing to kill indiscriminately, trains, subways, buses are ideal targets.*** The offer the terrorist ease of access, ease of escape, crowds and contained environments in train coaches and buses and tunnels are especially vulnerable to both conventional explosives and unconventional weapons.

We also know that terrorist attacks on public transportation systems cause great disruption and alarm. These are the traditional objectives of terrorists. And we have certainly seen in the last two-and-a-half years, since 9/11, not only the attack in Madrid, but we know now about a number of plots that were thwarted or discovered in other places, in Singapore, in Italy, in the Philippines. So this certainly is part of al Qaeda and like minded Jihadist's play book. It is there. They have done it. They tried to do it elsewhere. The threat is real.⁶⁸

This testimony was strikingly similar to that given before hearings in the Senate and the House over the last three years. However, as detailed in previous

sections the Senate leadership and the Bush Administration has failed to act. In effect, the need to enhance rail security has been completely ignored.

The failure of action is all the more maddening because many of the steps that need to be taken are simple, straight forward, and effective. This has been

stated to Congress and the Administration on numerous occasions. For example, Senators were specifically told that

[s]ecurity officials in countries that have been subjected to terrorist attacks have developed some effective countermeasures. Good security can make terrorist attacks more difficult, increase their likelihood of being detected, can minimize casualties and disruption, can reduce panic, and can reassure passengers.⁶⁹

Let's hope Administration officials and Senate Republicans exercise the leadership that the

American people expect and take the appropriate steps before it is too late.

WHAT NEEDS TO BE DONE

As detailed in this report, the vast nature of our rail system will present many challenges to security officials. The effort required should be aggressive and well-planned. Fortunately, security and industry experts are quite clear on many

common sense measures that should be taken. In fact, previous attacks in foreign countries have been analyzed and a set of lessons learned and best practices have been created.⁷⁰ Some of the best practices include:

- Threat Assessment and Analysis.
- Increased patrols/canine units.
- Additional Fencing and Physical barriers.
- Closed circuit television.
- Improved lighting.
- Access control and alarm systems.
- Effective Design for vehicles and facilities.
- Training for civilian staff
- Security technology.

According to the experts, a best practices approach is the way to proceed because

each individual system, station, or structure may face different threats and

have different needs. Fortunately, many of these “best practices” are being done by rail owners and operators right now. Industry officials have had nearly three years to determine where they are vulnerable and what measures need to be taken; however, high-level planning that

is necessary to tie it all together has not been completed. In addition, knowing what to do and having the resources to do it are two separate matters. More must be done, and it must be done quickly.

With Federal Assistance, Proven Security Upgrades can be Quickly Deployed

As demonstrated, the best practices include comprehensive threat assessments, security designs, the use of technology, and other strategic initiatives. To this point, the Administration has yet to achieve these tasks, and these high-level strategic efforts will be critical as we move forward. This will ensure that we properly allocate resources and prioritize threats and vulnerabilities. However, we should never let the perfect solution be the enemy of taking simple first steps in the right direction. Fortunately, the best practices agreed to by most experts mainly include simple security upgrades that can be quickly and efficiently deployed. Many of these simple approaches have been effective in other countries, and we should work to deploy them here immediately.

For example, visible security patrols have been proven to have a deterrent effect. As such, uniformed and undercover patrols in train stations and along tracks need to be increased. More security officials need to be patrolling our bridges, tunnels, and other sensitive areas looking for potential terrorists. More canine units should be deployed to detect bombs in the trains and the train stations. In short, additional officers can help detect and prevent attacks and can assist with emergency response.

Simple infrastructure upgrades can be undertaken to enhance security. Fencing needs to be built (or fixed where appropriate) around parking lots and critical sites. Doors to sensitive location need to be locked and strengthened

(when necessary), and lighting needs to be improved. These steps will help limit the ability of would-be terrorist to hide and conduct surveillance. Similarly, closed-circuit television should be widely deployed at strategic locations. Closed-circuit television has been used with great success in Britain, and its proper deployment will allow security officials to monitor sensitive locations, such as tunnel entrances around the clock with minimal effort. Moreover, blast-resistant trash receptacles should be installed. These special receptacles prevent trash cans from becoming hiding places for bombs.

The civilian workforce of rail operators should be utilized for prevention and emergency response. This will require specialized training, however, with proper training, civilian employees can be trained to be the eyes and ears of the security force. They can be trained to detect suspicious individuals and packages and to quickly alert security personnel. In addition, they can be trained to help evacuate passengers or administer first aid in the event of an emergency.⁷¹ These employees will often be the first responders and by properly training them, we can possibly save lives. With minimal government investment, these security upgrades can be undertaken immediately.

Pass the Rail Security Act of 2004: A Critical First Step

A critical first step that will dramatically enhance rail security is for Congress to pass the Rail Security Act of 2004 (S. 2273) (“Act”).⁷² This legislation finally passed the U.S. Senate on October 4, 2004; however, without President Bush’s immediate leadership, it is doubtful that it will become law. The legislation is critical because it will remedy many of the deficiencies in the

Administration’s approach to rail security by mandating necessary leadership duties and by providing critical funding for security upgrades. First, the legislation will require DHS to undertake the steps that security experts have been requesting for years. The bill will require the Under Secretary for Border Transportation at DHS to conduct and complete a comprehensive

vulnerability assessment for rail transportation, including the identification of threats to critical infrastructure assets, threats involving hazardous materials, and any other security weaknesses. As the legislation is currently drafted, the report will be due within 180 days of its passage, and it will be required to include specific recommendations to enhance security and provide cost estimates for implementation.

The Act would also assist the transportation police in conducting their duties by expanding their jurisdiction and, more importantly, by providing funding to hire more officers and canine units. In addition to providing a deterrent effect, the presence of police in the station helps allay passenger fears. For example, Police Chief James O'Donnell of the New York Metropolitan Transportation Authority attributed 97% ridership on New York's public transportation systems on the Monday after September 11th to the large presence of transit police on patrol.⁷³ In addition, the extra security personnel will include canine units, which will greatly enhance security without

inconveniencing patrons. Moreover, additional officers will enhance first responder efforts in the event of a tragedy. The first ten minutes of any crises is critical, and the more well-trained first responders available the better.



The Act will also provide critical funding for various security upgrades to Amtrak and freight rail systems. For example, the Act will authorize funding for the fire and life-safety improvements along the Northeast Corridor, including \$570 million for New York Penn Station tunnels, \$57 million for Baltimore tunnels, and \$40 million for Union Station in Washington, DC. In addition, the Act would authorize \$63.7 million for station and tunnel security for Amtrak, interoperable communications, and emergency preparedness training. Finally, the Act will provide funding for passenger and freight rail systems that incur costs to prevent or respond to

terrorist acts. These expenses could include employee awareness training, intelligence sharing efforts, and others.

To enhance long-term security efforts, and to promote the development and use of new technologies, the Act includes a research and development provision. This provision requires DHS and DOT to conduct a research project related to intercity passenger freight security. This program, funded at \$50 million in 2005 and 2006, could include projects to reduce the vulnerability of passenger trains and equipment to explosives and biological and chemical substances. The project could also include research into

enhanced methods of hazardous materials transportation, new emergency response techniques, and others.

Finally, the act will also provide funding to train the civilian workforce on security awareness, preparedness, and emergency response. The civilian workforce can and should form a critical role in prevention and response, and with the right training, each ticket agent, baggage handler, and janitor can assist in the fight against terrorism. Simply reporting suspicious activity can help prevent an attack and knowing how to respond in a crisis by leading passengers to safety can help maintain order and save lives.

CONCLUSION

Since President Bush has taken office, I have argued that his Administration has not focused our efforts in the right direction at home and abroad. And, as detailed in this report, I think one of the

glaring failings is the lack of focus on rail security. I have continuously pushed for action on this subject to no avail. For example, on November 2002 I stated on the Senate floor that

I realize I'm a bit of a broken record on this. I've been on the floor many, many times on this. But I must say we're going to rue the day that we failed to take the action to enhance our rail system. . . . There's virtually [no security] at all. . . . We're making a serious, serious, serious mistake, totally ignoring what the CIA has publicly pointed out is a target and a concern and what everybody knows, and that is

the threat of terror and the richness of the targets available on the rail system.⁷⁴

Over the next two years, nothing happened, and in March 2004 I reminded my fellow Senators that

"[w]e need to take immediate action to keep passengers safe and make our rail system more secure. We need more dogs to sniff for explosives. More police officers, better lighting, closed-circuit television surveillance, fencing – nothing fancy or experimental, just resources to do what we already know can work. It is imperative that the good people who board these trains know they are going to be protected. And bad guys and terrorists who would seek to target our rail system need to know they will be stopped and caught."⁷⁵

To this day, I, along with like-minded colleagues, have been unable to spur this Administration to act. This is not a partisan issue. Senator McCain has repeatedly called upon the Administration to provide both leadership and to provide resources to enhance rail security. By focusing exclusively on aviation security, it appears that the Bush Administration is focusing on stopping the last attack rather than looking proactively towards new threats. No doubt there has been a lot of activity and bureaucratic reshuffling in the name of homeland security; however, I believe that we have not done enough, and I concur with the

9/11 Commission in its ominous conclusions that "[w]e are not safe."⁷⁶

After years of delay, we learned that a majority of the U.S. Senate supports enhanced rail security efforts, and I believe that if President Bush would express his support for the Rail Security Act of 2004, we could get legislation passed by the House of Representatives and signed into law during the November legislative session. Although it is only a first step, the "Rail Security Act of 2004" will help move our country towards a more comprehensive, forward looking approach to rail security. It will require the DHS to exercise the leadership expected by the American

people, and it will provide critical funding for rail owners and their security personnel who are facing incredible challenges with little assistance. We know the threat is there. We know what we can do to substantially reduce the threat, and it is my sincere hope that we will not have to experience a tragedy such as the one in Madrid to spur this Administration to act.

Thomas Jefferson has been credited with stating that “the price of freedom is eternal vigilance.” In today’s America,

our eyes should be wide open to the threat we face. We know that al Qaeda operatives have directly targeted our rail systems, and in light of these known threats, vigilance requires us to take appropriate preventive actions. We cannot wait for another tragedy. The American people deserve more proactive leadership, and I hope that my colleagues and President Bush will take the necessary steps to enhance rail security, beginning by enacting the Rail Security Act of 2003 into law.

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- ⁵⁰ *Hearing before U.S. House Comm. on Transportation and Infrastructure Subcomm. on Railroads*, 108th Cong. (May 5, 2004) (Statement of Edward Hamberger, CEO, Association of American Railroads).
- ⁵¹ Guerrero, *supra* note 31.
- ⁵² The plan is a comprehensive risk management and security plan that includes a database of railroad critical assets, an assessment of vulnerabilities, analysis of the terrorism threat, and calculations of risk; identification of countermeasures; definition of alert status, and others. Association of American Railroads, *Freight Railroad Security Plan* (2004), available at http://aar.org/Rail_Safety/Rail_Security_plan.asp (on file with author).
- ⁵³ Fortunately, passenger rail companies had emergency plans in place to evacuate passengers in the case of accidents, many of which will be applicable to any terrorist attack.
- ⁵⁴ U.S. General Accounting Office, *Rail Safety and Security Some Actions Already Taken to Enhance Rail Security, but Risk-based Plan Needed*, GAO-03-435, (2003).
- ⁵⁵ To its credit, Amtrak has purchased emergency equipment for first responders and has provided critical training to first responders. In addition, with the assistance of TSA and FRA Amtrak has arranged to conduct blast vulnerability studies of train equipment and is working to develop security awareness training for all employees. This is an example of the type of public-private partnership and interagency cooperation that has been too often missing.
- ⁵⁶ *Keeping America's Mass Transportation System Safe: Are the Laws Adequate?: Hearing before U.S. Senate Judiciary Comm.*, 108th Cong. at 69-70 (April 8, 2004) [hereinafter, *Keeping*] (statement of Ernest Frazier, Sr. Amtrak, Chief of Police and Security Dep't).

⁵⁷ *Id.*, at 71 (April 8, 2004), (Statement of Brian Michael Jenkins, National Transportation Security Director).

⁵⁸ This report focuses on the efforts made in the United States Senate. There have also been efforts in the U.S. House of Representatives, including hearings before the Committee on Transportation Infrastructure, a report issued by minority members of the House Select Committee on Homeland Security, the introduction of various pieces of legislation, and others. As in the Senate, their efforts have also met with resistance by the Republican Leadership and the Administration.

⁵⁹ Senator Ernest F. Hollings was the original sponsor of the legislation, which was introduced with ten co-sponsors: Senator Joseph R. Biden, Senator Thomas Carper, Senator Richard Durbin, Senator John Kerry, Senator Paul Sarbanes, Senator John Breaux, Senator Max Cleland, Senator James Jeffords, Senator Jay Rockefeller, Senator Charles Schumer. S. 1530, 107th Cong. (2001).

⁶⁰ Hot-lining is a procedure that allows quick consideration and passage of urgent legislation. Under Senate rules, any Senator has the ability to place a hold on legislation to prevent it from being hot-lined.

⁶¹ Bill Gertz, *Terrorists Said to Seek entry to U.S., via Mexico*, The Washington Times, April 7, 2003. A1.

⁶² *Hearing*, *supra* note 48, at 89.

⁶³ Co-sponsors include: Senator Joseph R. Biden, Senator Barbara Boxer, Senator John Breaux, Senator Maria Cantwell, Senator Thomas Carper, Senator Hilary Clinton, Senator Susan Collins, Senator Jon Corzine, Senator Byron Dorgan, Senator Peter Fitzgerald, Senator Earnest Hollings, Senator Kay Bailey Hutchinson, Senator Daniel Inouye, Senator Edward M. Kennedy, Senator Frank Lautenberg, Senator Joseph Lieberman, Senator Jay Rockefeller, Senator Charles Schumer, Senator Olympia Snowe. S. 2273, 108th Cong. (2004).

⁶⁴ *Keeping America's Mass Transportation System Safe: Are the Laws Adequate?: Hearing before U.S. Senate Judiciary Comm.*, 108th Cong. (April 8, 2004).

⁶⁵ 49 U.S.C. § 46505 (West 2004).

⁶⁶ 18 U.S.C. § 922(e) (West 2004); U.S. v. Hartzog, 983 F.2d 604 (4th Cir. 1993).

⁶⁷ 18 U.S.C. § 1993 (West 2004).

⁶⁸ *See supra* text accompanying note 67.

⁶⁹ *Id.*

⁷⁰ *Jenkins*, *supra* note 2.

⁷¹ *Hearing*, *supra* note 3.

⁷² Complete details of the bill available at <http://thomas.loc.gov/>.

⁷³ Steve Dunham, *The 'Oh' Police: Transit Police and Counterterrorism*, Homeland Security Institute (2004), available at www.homelandsecurity.org/journal/articles/ohpolice.html (on file with author).

⁷⁴ Senator Joseph R. Biden, Jr., Statement on the Floor of the United States Senate, November 14, 2002, available at <http://biden.senate.gov/pressapp/record.cfm?id=188494>

⁷⁵ Senator Joseph R. Biden, Jr., *Bipartisan Bill to Improve Rail Security Set to Leave Station*, Press Release, April 2, 2004, available at <http://biden.senate.gov/pressapp/record.cfm?id=220055>

⁷⁶ The Final Report of the National Commission on Terrorist Attacks Upon the United States, The National Commission on Terrorist Attacks Upon the United States, accessed at <http://www.9-11commission.gov/report/911ReportExec.pdf>.